In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 3812 of 2002
Date of decision:

Smt. Asharafi Devi Memorial Charitable Trust

---Petitioner

v.

Ram Kumar

---Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr.J.R.Mittal, Senior Advocate with
Mr. Lalit Sharma, Advocate,
for the petitioner-tenant.

Mr.C.B.Goel, Advocate,
for the respondent-landlord.

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M.M.KUMAR J.

'Whether the agreed rate of rent is to be considered as basic rent within the meaning of Section 4(2)(b) of Haryana Urban (Control of rent and Eviction) Act, 1973 (for brevity 'the Act'), in the process of fixing fair rent even after expiry of lease period stipulated in the lease deed', is the pristine legal question, which has been referred for the opinion of this Full Bench. This question has arisen on account of the view taken by a learned Single Judge in the case of **Gobind Ram v. Kanshi Ram ,**2002 HRR 37 holding that the agreed rate of rent would not be the basic rent after the expiry of the lease period as per the stipulation in the lease deed. When

the matter came up for consideration before one of us (Hemant Gupta, J.) a doubt was expressed about the correctness of the judgment rendered by the learned Single Judge in **Gobind Ram's case** (supra). According to the reference order, a contrary view has been taken by Hemant Gupta., J. in Civil Revision No. 3114 of 1987 decided on 9.7.2003 titled as **Som Parkash v. Suresh Kumar. A**fter noticing facts the following reference has been made for the opinion of this Bench:-

> "The learned counsel for the petitioner argued that finding recorded by the Appellate Authority is not sustainable in view of the judgment Gobind Ram Vs. Kanshi Ram 2002 HRR 37 wherein the judgment of Supreme Court in Ishwar Swaroop Sharma's case has been considered. The learned Single Judge of this Court in Gobind Ram Vs. Kanshi Ram 2002 HRR 37 has held that the agreed rent would be the basic rent only during the subsistence of tenancy. After the period prescribed of letting out, the agreed rent cannot be held to be a basic rent.
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> On the other hand, learned counsel for the respondent relied upon M/s Bhagwan Singh and Company vs . Central Bank of India 1988 (1) PLR 290, Ved Parkash vs. Raj Rani (1988) P.L.R. 338 and Dayal Chand's case i.e. 1970 (2) RCR 205 to contend that even after the expiry of period prescribed in the rent note, or even if there is no rent note, the agreed rent would be basic rent.

With respect, I am unable to agree with the finding recorded by the learned Single Judge in Gobind Ram's case. The said conclusion, in my view, runs counter to the finding recorded by the Hon'ble Supreme Court in Ishwar Swaroop Sharma's case as well as Division Bench judgment of this Court in M/s Bhagwan Singh and Company's case which in fact followed earlier Division Bench in Dayal Chand's case (supra).

Sitting singly, I have taken a contrary view in Civil Revision No. 3114 of 1987 decided on 9.7.2002 (2003?) to the view of learned Single Judge in Gobind Ram's case (supra).

In view of conflict in opinion, the present revision petition be placed before Hon'ble the Chief Justice for consideration of the the matter a Larger Bench."

Before we proceed to answer the question noticing the rival contentions, a few facts may first be noticed to put the controversy in its true perspective. The tenant-respondent was inducted as a tenant at a monthly rent of Rs. 500/- since 1.3.1995. The landlord-petitioner filed rent petition No. 15 of 24.3.2000, under Section 4 of the Act before the Rent Controller, Narwana for fixation of fair rent of the shop in question. The Rent Controller did not take into account the monthly rent of Rs. 500/- being paid by the tenant-respondent as agreed rate of rent and proceeded to assess the market rent of the shop in question. Accordingly, he determined the basic rent at Rs. 5,000/- per month and made addition for fixation of fair

rent in accordance with the average of All India Wholesale Price Index Numbers as per the provisions of Section 4(3) of the Act. The learned Appellate Authority on an appeal filed by the tenant-respondent accepted the monthly rent of Rs. 500/- per month as agreed rate of rent and made the same as a basis for determining basic rent. When the matter came up for consideration before brother Hemant Gupta, J., an apparent conflict, as noticed earlier, was found necessitating the reference to this Full Bench. It is interesting to note that the judgments in **Som Parkash's case** (supra) and **Gobind Ram's case** (supra) take notice of judgment of Hon'ble the Supreme Court in the case of **Ishwar Swaroop Sharma v. Jagmohan lal,** AIR 2001 SC 370 and two Division Bench judgments of this Court in the cases of **Bhagwan Singh and Company v. Central Bank of India,** (1988) 1 PLR 290 and **Ved Parkash v. Raj Rani,** (1988) 1 PLR 338. However, both the judgments have recorded a conflicting view. In **Gobind Ram's case** (supra), the learned Single Judge placing reliance on **Ishwar Swaroop Sharma's case** (supra) has come to the conclusion that the Division Bench judgment in **Bhagwan Singh and Company's case** (supra) and **Ved Parkash's case** (supra) were impliedly overruled by keeping in view of the decision of Hon'ble the Supreme Court in ***Ishwar Swaroop Sharma's case*** **(**supra).

Mr. J.R.Mittal, learned senior counsel for the landlord-petitioner supporting the view taken in **Gobind Ram's case** (supra) has submitted that under Section 4 (2)(b) of the Act, the only question which needs to be answered is whether there was agreement of tenancy in operation stipulating the rate of rent payable when the application for fixation of fair rent was filed. According to the learned counsel, in the

absence of any such subsisting agreement stipulating rate of rent, it cannot constitute a basis for fixing basic rent as postulated by Section 4(2)(b) of the Act. He has maintained that the shop in dispute was constructed after 1962 which would attract the provisions of Section (4)(2) (b), which is on rent at the rate of Rs. 500/- per month since 1.3.1995. The aforementioned rate of rent cannot be considered as agreed rent between the parties and the market rate of rent has been rightly assessed by the Rent Controller keeping in view the similar sized shop on rent in the locality which have been proved by Exhibits A-2, A-3 and A-4. He has also emphasised that the judgment of Hon'ble the Supreme Court in the case of **Ishwar Swaroop Sharma's case** (supra) would not apply to the facts of the present case because in that case tenancy was created in 1975 and the rate of rent was increased to Rs. 200/- per month in 1976. When application for fixation of fair rent was made in 1989 it was held that agreed rate of rent after expiry of tenancy was Rs. 200/- per month which was accepted to constitute a basis for concluding the same to be basic rent. According to the learned counsel there is no such agreement after the expiry of the lease period and, therefore, the judgment in **Ishwar Swaroop Sharma's case** (supra) would not apply to the facts of the present case. He has vehemently submitted that the view taken by the learned Single Judge in **Gobind Ram's case** (supra) lays down correct law and is thus deserved to be upheld.

Mr. C.B.Goel, learned counsel for the tenant-respondent has vehemently argued that the view taken by the learned Single Judge in **Gobind Ram's case** (Supra), cannot be considered to have laid down correct law. He has first referred to a judgment of Hon'ble the Supreme Court in the case of **Sant Lal Bharti vs. State of Punjab** (1988) 1 SCC

366 and argued that the provisions of Section 4 of the East Punjab Urban Rent Restriction Act, 1949, which are para materia to the corresponding provisions of Section 4 of the Act, were upheld. According to the learned counsel challenge to the provisions for being violative of Articles 14 and 19 (1) (g) of the Constitution was repelled by Hon'ble the Suprme Court. Learned counsel has then placed reliance on three Division Bench judgments of this Court in the cases of **Dayal Chand v. The Union of India and others** 1970 RCR 205; **Ved Parkash (supra)** and **M/s Bhagwan Singh and Company** (supra) and argued that once rent fixed by the parties has been accepted as agreed rent then it has to be regarded as the basic rent for the purposes of Section 4(2)(b) of the Act. He has then placed reliance on paras 5 to 13 of the judgment of Hon'ble the Supreme Court in the case of **Ishwar Swaroop Sharma** (supra) and submitted that in that case a shop was let out in 1975 at a monthly rent of Rs. 200/- per month. An application by the landlord was filed in the year 1989 under Section 4 of the Act with a request to the Rent Controller to fix the fair rent. The application was allowed by the Rent Controller rejecting the plea that Rs. 200/- per month was the agreed rate of rent. Accordingly, the Rent Controller fixed the fair rent at Rs. 1000/- per month. However, the Appellate Authority on appeal had held that in view of Section 4 of the Act, the landlord was not entitled to market rent but to a percentage increase as envisaged by Section 4 (3) of the Act. Accordingly, the fair rent was determined at Rs. 328/- per month with effect from the date of filing of the application. The aforementioned view has been affirmed by this Court as well as by Hon'ble the Supreme Court.

Mr. Goel, has also submitted that the learned Single Judge in

Gobind Ram's case (supra) has committed grave error in law by overruling two judgments of this Court rendered by Division Benches in the cases of **Bhagwan Singh and Company's case** (supra) and **Ved Parkash's case** (supra)because both the Division Benches had taken the same view which has later on been taken by Hon'ble the Supreme Court in **Ishwar Swaroop Sharma's case** (supra). Learned counsel has emphasised that the learned Single Judge in **Gobind Ram's case** (supra) has erroneously applied the judgment of Hon'ble the Supreme Court in **Ishwar Swaroop Sharma's case** (supra) by holding that the rate of rent mentioned in the rent note was not be regarded as the rent agreed between the landlord and the tenant. He has stressed that no such proposition would flow from the perusal of the judgment of Hon'ble the Supreme Court in **Ishwar Swaroop Sharma's case** (Supra). He has, therefore, submitted that the judgment of the learned Single Judge in **Gobind Ram's case** (supra) is liable to be overruled and that the view taken by two Division Benches of this Court, which is consistent with the law laid down by Hon'ble the Supreme Court in **Ishwar Swaroop Sharma's case** (supra), should be restored. He has prayed that the petition filed by the landlord-petitioner is liable to be dismissed by upholding order passed by the Appellate Authority.

We have thoughtfully considered the rival contention raised by the counsel for the parties and with their able assistance have gone through the record of the case. After minute examination of Section 4 of the Act and various judgments cited at the bar, we have reached the conclusion that the view taken by the learned Single Judge in **Gobind Ram's case** (supra) cannot be accepted. To appreciate the contentions we may first read Section

4 of the Act which is as under:-

> 4. **Determination of fair rent-** (1) The Controller shall, on application by the tenant or the landlord of a building or rented land, fix the fair rent for such building or rented land after holding such enquiry as he may think fit. Such fair rent shall be operative from the date of application.
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> (2) In fixing the fair rent under this Section, the Controller shall first determine the basic rent which shall be-
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> (a) in respect of the building the construction whereof was completed on or before the 31st day of December, 1961, or land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1962; and
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> (b)in respect of the building the construction whereof is competed after the 31st day of December, 1961 or land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the basic rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land at the date of application.
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> (3)In fixing the fair rent, the Controller may allow an increase or decrease on the basic rent

> determined under sub-section (2), not exceeding twenty-five per centum of the rise or fall in the general level to prices since the date of agreed rent or the date of application, as the case may be, in accordance with the [average of All India Wholesale Price Index Numbers, as determined by the Government of India, for the calendar year immediately preceding the date of application].
>
> (4) XXXX XXXXX XXXXX
>
> (5) XXXX XXX XXXXXX."

A perusal of Section 4 (2)(b) would show that fair rent of a building construction whereof has been completed after 31.12.1961 is to be determined on the basis of rent agreed between landlord and the tenant preceding the date of application. In the absence of rent agreed between the parties the basic rent is required to be determined on the basis of rent prevailing in the locality for a similar buildings or rented land on the date of the application. The expression ' rent agreed' as used in Section 4 (2)(b) came for the interpretation of Hon'ble the Supreme Court in the case of **Ishwar Swaroop Sharma** (supra). Para 9 to 13 would be relevant in that regard which reads as under:-

> "9.The key to the resolution of the dispute raised lies in the words "rent agreed" used in Section 4(2)(b). In a narrow sense rent is understood as the payment agreed to be made to the landlord by the tenant in consideration for the right to use the rented premises.

The landlord and the tenant agree that the tenant will be entitled to occupy and use the demised premises at an agreed rent. Without an agreement as to the rent payable there no tenancy is created. This is also how rent is defined in Section 105 of the Transfer of Property Act, 1882. The element of assent is an integral to the concept of rent. If the word 'rent' is given this narrow meaning then, as urged by the appellant the latter half of Section 4(2)(b) would indeed be rendered redundant. But the legislature has used the word 'agreed' in juxtaposition to 'rent'. If the word 'rent' is used in the narrow sense the word 'agreed' would be tautologous. We cannot assume that the Legislature has used any word without purpose. In our view, by using the words 'agreed rent' the Legislature intended to indicate that the word rent must be construed in a wider sense to include, apart from the narrow connotation, any payment made for use of land where the quantum may have been fixed otherwise than by agreement. The definition of the word “tenant” in Section 2(h) of the Act also makes this clear.

“ “tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy.....”

10. The tenancy being terminated the

agreement ceases to operate as a voluntary bilateral transaction. With the cesser of the agreed tenancy, the agreement as to rent would also cease. Nevertheless, under Section 2(h) of the Act the tenant would be liable statutorily to make payment of 'rent'. Similarly after fair rent is fixed under Section 4 of the Act, the rent payable is not the agreed rent.

11.Therefore for the purpose of determining fair rent Section 4(2)(b) draws a distinction between cases where the parties have agreed to the rent and cases where rent is payable otherwise than by agreement. In the first case, the agreed rent is to be taken as the base and the increase determined according to the formula provided in Section 4(3). In the second case, the base is the market rate.

12.There is no warrant for drawing any distinction between a monthly tenancy and tenancies for longer periods. Nor is it necessary that the agreement should have been entered into immediately preceding the date of the application. Section 4(2)(b) uses the word 'preceding' without any limitation. This may be contrasted with Section 3 where the word 'preceding' is qualified by the word 'immediately'.

13. For fixing the basic rent under Section 4 of the only question would be – was there a subsisting agreement of tenancy under which rent was

> payable when the application for fixation of fair rent was filed? If the answer is in the affirmative the agreed rent must be taken as the basic rent. If not, then the basic rent is the prevailing market rate. Therefore, even though the agreement may have been entered into in 1976 as is admittedly true in this case, but the tenancy was continuing until the date of the application, the Rent Controller was obliged to take the rate agreed to in 1976 as the basic rent under the first limb of Section 4(2)(b). It is only after the fair rent is fixed that the landlord could seek re-fixation under the second limb subject to the limitations provided in the Act, as the rent would then cease to be the agreed rent."

The aforementioned enunciation of law in **Ishwar Swaroop Sharma's case** (supra) does not leave any manner of doubt that if on the date of filing of the application under Section 4 of the Act for determination of fair rent, the agreed rent was still in vogue thus, it has to be regarded as the basic rent and the same was to constitute the basis for determining fair rent.

A perusal of three Division Bench judgments of this Court in cases of **M/s Bhagwan Singh and Company (**supra), **Ved Parkash** (supra) and **Dayal Chand** (supra) would show that similar view has been taken by this Court. So, there is, thus, no room to conclude that the rate of rent which was being paid by the tenant -petitioner, in the instant case it was Rs. 500/- per month has to be regarded as agreed rate of rent as on

1.3.1995. Therefore, additions in accordance with Section 4 (3) have been correctly made by the Appellate Authority and the same is liable to be upheld.

Likewise, the view taken by one of us (Hemant Gupta, J.) in the case of **Som Parkash** (supra) has to be upheld having laid down the correct law and the view of the learned Single Judge in **Gobind Ram's case** (supra) is liable to be overruled.

The argument of Mr. Mittal, learned counsel for the tenant-petitioner is liable to be rejected. The distinction sought to be drawn between **Ishwar Swaroop Sharma's** case and the instant case is that the rate of rent was increased to Rs. 200/- per month in the year 1976 in **Ishwar Swaroop Sharma's** case (supra), which fact is missing in the instant case. The distinction is wholly artificial and unwarranted because as per the interpretation given to Section 4 (2)(b) of the Act, no such distinction has been apprehended by their Lordships in **Ishwar Swaroop Sharma's** case it has been laid down that Legislature intended to indicate that the word 'rent' must be construed in a wider sense to include any payment made for use of land where the quantum may have been fixed otherwise than by agreement. In support of the aforementioned, wider interpretation of Section 2 (h) of the Act, has also been relied upon. Therefore, we do not find any substance in the argument raised by learned counsel and we have no hesitation to reject the same.

For the reasons aforementioned, the question posed in first para of this judgment is answered in the affirmative. In other words, agreed rate of rent has to regarded as basic rent within the meaning of

Section 4(2) (b) of the Act in the process of fixing fair rent irrespective of the fact whether the lease period stipulated in a lease deed has expired.

Accordingly the revision petition fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

(HEMANT GUPTA)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

SEPTEMBER , 2007
paramjit